CASE OF GENERAL TOCHMAN.

HOUSE OF REPRESENTATIVES, December 10, 1863.—Referred to the Committee on Foreign Affairs and ordered to be printed.

GENERAL TOCHMAN TO MR. FOOTE.

RICHMOND, VA., December 5, 1863.

Hon. H. S. FOOTE, *Chairman of the Committee on Foreign Affairs, House of Representatives, C. S. Congress:*

DEAR SIR: Preparing to leave this country to take part in the struggle of my native land, Poland, for her independence, I have addressed a letter to the President, on the 19th of September last, soliciting his Excellency to adopt, or to recommend to Congress, some measure that my pecuniary claim arising from raising a brigade of foreign troops at the commencement of this war, could be settled with me before my departure for Europe—either by the payment to me of the stipends and emoluments of Brigadier General for three years, it being the period for which I raised my brigade, and its troops being in the actual service of the Confederate States. Or, by refunding to me my actual expenses of raising those troops—amounting to $5,925 in gold and $1,600 in the Confederate States currency, exclusive of all other losses, for which, and for my personal services, I claim nothing. [Exhibit A.] No answer coming to this, my request, I wrote, on the 6th of November last, to the Secretary of State, begging him to bring to the notice of the President, that my speedy departure for Europe, which much depends upon settling that account, would greatly benefit the cause of the Confederate States, as to maintain *there* that position and confidence which I possessed before taking part with the South in this war, it will be absolutely necessary that I should elucidate, develop, and defend the principles which determined me to unite with them. [Exhibit B.] The Secretary of State having declined to comply with that request, I came to Richmond to urge this subject, and here I

found out that the President referred it to the Secretary of War, with certain instructions addressed to him; and that the Secretary decided, that the War Department "had not been invested with the power, or means of paying for official services in cases where no commission had been issued." As this decision does not meet the case, I have filed in his department a paper praying for its review. The enclosed copy of that paper, [Exhibit C,] contains, at full length, the President's instructions given to the Secretary and the decision of the latter. Upon the perusal of the foregoing exhibits, you will find that, though my demand of settling this claim before departing for Europe, and in the manner set forth in the letter addressed to the President, is based upon the simple principles of perfect right, justice, and equity, which give its cognizance to the Committee on Claims; it is at the same time supported and interwoven throughout by those principles of State policy of the Confederate States, and emanating from it their own interest, which necessarily give it, too, and with preference, to the Committee on Foreign Affairs. I, therefore, respectfully beg you, as the Chairman of that Committee, to submit this case to their cognizance, mediation, or recommendation. For either of these actions, I beg them, in the name and for the benefit of bleeding Poland, as well as of the Confederate States, with whose cause I became identified, by raising my brigade for their defence.

I have the honor, sir, to be,

With the utmost respect,

Your most obedient servant,

G. TOCHMAN.

[*EXHIBIT A.*]

GEN. TOCHMAN'S LETTER TO PRESIDENT DAVIS.

MAX-MEADOWS, WYTHE COUNTY, VA.,
September 19, 1863.

To His Excellency, JEFFERSON DAVIS,
President of the Confederate States:

Mr. PRESIDENT: The resolutions adopted and recommended by Congress by an unanimous vote of the Committee on Military Affairs of the House of Representatives, which are on the Calendar of that House, for its action at the next session, [Exhibit A,] would place me right as to my position, both here and in Europe; for no caviller would be able to infer, and set forth against me, charges of imputation derogatory to my character, when they prove and show plainly that your Excellency refused me the regular commission to command the troops I raised, from no other motives but because the Secretary of War, Hon. L. P. Walker, in stipulating with me for raising those

troops, exceeded the power you invested him with. But I submit, most respectfully, that the Court of Claims, to which that committee leaves the settlement of my "pecuniary grievances," not being created yet, it would take at least a year or two to recover, through its agency, what is due to me. At this juncture, Mr. President, my native country, Poland, calls for my services. And, as the recovery of my pecuniary claim, before my departure for Europe, might enable me to render her some signal services, may I not hope that you will be pleased to take proper measures that this claim might be settled with me, without referring it to the Court of Claims, which does not yet exist. I have suffered very heavy losses in the property left at the North, in the abandoment of the northern clientel, and by the separation from my family for more than two years and a half already closing. The loss of the fees, in a single case of the heirs of General Kosciusko, for the recovery of land in Ohio, in which case Senator Pugh, of that State, is associated with me as counsel, amounts to several thousand dollars. I lay no claim for the compensation of all these losses. I consider them as losses resulting from the ordinary course of the war, such as you, and other loyal citizens, have suffered, and may suffer, by its incidents. I claim only *to have the right* to recover, either the stipends and emoluments of brigadier, for three years, it being the period for which I raised *my troops, which are in the actual service of the Confederate States*; or, should you object to this mode of settling with me this account, I beg you to recommend to Congress, that my *actual expenses* of raising those troops, and of living here since the 27th of April, 1861, which is the date of my leaving Washington, D. C., to tender you my services, be refunded to me, without referring them, for settlement, to the court, not being in existence. Congress would not refuse such recommendation, for there are many precedents on the congressional record to show that this was done in cases less urgent, less meritorious, and less equitable. The gross amount of these expenses is $5,925, in gold, and partly in Virginia and Louisiana currency, when it was at par with the gold coin, besides $1,600 in currency of the Confederate States, which I borrowed, recently, for my support here. But it is submitted that the act of the Provisional Congress, No. 109, approved May 8, 1861, under the authority of which your Secretary of War stipulated for my services, making no provision for refunding such expenses for raising troops thereby authorized to be raised, I construed its intention to be: the *usage* practiced by all other nations and their governments in similar emergencies, which is, that those *military men* (natives or foreigners) who, in case of war, undertake to raise troops for their own commands, *in lieu* of their expenses, and as a recompense for their services, receive commissions in ranks corresponding to the number of troops raised, and the stipends and emoluments attached, by law, to their commissions. So construing the act of Congress under which I accepted the authority to raise troops for my own command, and relying, *bona fide*, upon the express agreement with your Secretary of War, that I would command all the troops I might raise under that authority, I did not expect to have ever any liquidation with the Gov-

ernment for my disbursments. I did not keep, therefore, any account of those disbursements, and it is now impossible for me to make any specification of their items, or to support them by the vouchers. I can only prove, by my oaths, that their gross amount, above stated, is true and correct, which oath I am prepared to take whenever required. And, if required, I submit to proving the loan contracted for my support, by the testimony of the creditors.

Whichever mode of settling with me this account your Excellency may be pleased to adopt, the sum of $1,105 33 in the Confederate States currency should be deducted, which was paid to me in October, 1861, under the orders of the Hon. J. P. Benjamin, then acting Secretary of War, as colonel's stipends, due for three months and thirteen days' services—including some expenses of the postage and telegraphic dispatches. It is hoped, however, that should you prefer to refund me the expenses, they will be refunded in the same currency I bore and paid them.

Mr. President, allow me yet to submit, that but for the unfortunate misunderstanding which arose, as it appears now, from the Secretary of War having exceeded his authority, my services might have become very valuable to the cause of the Confederate States. The fact that, in less than six weeks, *upon my proclamation*, 1,415 foreigners, exclusive of the natives, enlisted into my brigade, certainly authorizes an inference that I could raise a great number of foreign troops—had I been left in command of that brigade, which, moreover, by the mere power of influence, might have checked, considerably, the enlistment of foreigners into the Federal army, and might have gained the Confederate States this public opinion abroad, they so need, to obtain recognition of their independence. But whatever would have been the result of the expectations which my first success, herein alluded to, authorizes me to infer, the enclosed, [Exhibit B,] which is the original charter incorporating, in the State of New York, a "Polish-Sclavonian Literary Association," composed, as the charter shows, of the most prominent and powerful leaders of all political parties of the Northern section of the old Union, of which association I am the founder, and was one of the vice presidents, since its organization, will disclose to your Excellency at what sacrifices, of the material interests of Poland, I have seperated myself from the North to take part, in this war, with the South, may I not then hope, that at least, in consideration of this great sacrifice of the material interests of Poland, for the exclvsive benefit of the Confederate States, the simple justice of settling with me this claim, would be granted to enable me to serve, at this crisis, the sacred cause of my native land?

Begging for the preservation of the charter, until I call for it, at the Private Secretary's office,

I have the honor to be,

Your Excellency's most obedient servant,

G. TOCHMAN.

[A.]

Extract from the Report of the Committee on Military Affairs of the House of Representatives of the Confederate States Congress.

"Your committee, to whom was referred the memorial of Major Gaspar Tochman, late of the Polish army, &c., &c., have had the same under consideration, and beg respectfully to report:"

Here follows the report, which concludes:

"Your committee, fully appreciating the patriotic zeal and self-sacrificing devotion to our holy cause, manifest through the whole conduct of memorialist, whilst considering the court of claims, provided for by the Constitution, as the appropriate tribunal for the investigation and adjustment of pecuniary grievances, recommend the adoption of the following resolutions, as a just tribute and vindication of the character, and integrity of the intention of memorialist.

"Whereas, the Secretary of War, on the 20th day of May, 1861, authorized Major Gaspar Tochman, late of the Polish army, &c., &c., to raise ten companies, to be composed of persons of foreign birth, and to enlist for the war, with the privilege on the part of the privates to withdraw at the end of three years. Or, *should he find it practicable*, to raise twenty companies, which would be organized into a brigade; or, to raise two regiments for the war, to be received with the officers, as far as should be acceptable, to the Confederate Government; and,

"Whereas, said Major Gaspar Tochman, acting under said authority, did actually raise for the war one thousand seven hundred men, exclusive of officers; and,

"Whereas, it appears from the letter of the President, addressed to said Major Gaspar Tochman, on the 25th of October, 1861, that the Secretary of War was not authorized by the President to promise him the commission of a Brigadier General, but to tender him the appointment of a Colonelcy to one of the regiments to be raised, it is, nevertheless, due to the honor and character of said Major Gaspar Tochman, which it is believed the President has no design to impeach, to admit his assertion that the intention of the President was not known to him when he accepted the authority to raise, and did raise troops under it; and it is therefore,

"*Resolved*, That in the history of Major Gaspar Tochman's efforts to raise troops under said authority, and identify himself with the Confederate States army of these Confederate States, Congress finds the most praiseworthy devotion to sound principles and free government, and nothing in the least prejudicial to his honor and character as a soldier and gentleman."

[By Mr. HARRIS, of Missouri.—April 23, 1863.—Placed on the calendar and ordered to be printed.]

[B.]

"*An Act to incorporate the Polish Sclavonian Literary Association, in the State of New York. Passed March* 26, 1846, *by a two-third vote.*

"*The people of the State of New York, represented in Senate and Assembly, do enact as follows :*

"SEC. 1. Major Gaspar Tochman, now counsellor at law of the bar of this State, and of the Supreme Court of the United States, and associated with him Hon. William H. Seward, also counsellor at law, formerly Governor, George Folsome, Senator, Samuel J. Tilden, member of the Assembly of this State, John Davis, of Massachusetts, William Upham and Samuel S. Phelps, of Vermont, John McPherson Berrien, of Georgia, William S. Archer, of Virginia. Albert C. Greene and James F. Simmons, of Rhode Island, Jacob W. Miller and William L. Dayton, of New Jersey, George Evans, of Maine, Willie P. Mangum, of North Carolina, Reverdy Johnson and James A. Pearce, of Maryland, Thomas Corwin, of Ohio, John J. Crittenden, of Kentucky, Spencer Jarnagin of Tennesssee, Senators of the United States in Congress; John DeMott, Albert Smith, Elias B. Hanes, Erastus D. Culver, Washington Hunt, Hugh White, Abner Lewis, R P. Herrick, Horace Wheaton, of this State, Andrew Trumbo, John McHenry, William P. Thomasson, of Kentucky, Julius Brockwell, Daniel G. King, Charles Hudson and George Ashmun, of Massachusetts, Columbus Dolano, Samuel S. Venton, Jesup M. Root, Daniel R. Tilden, and Joshua R. Giddings, of Ohio, John Runk, George Syles and Josiah Edsal of New Jersey, Alfred Dockery, of North Carolina, George P. Marsh, and Jacob Collamer, of Vermont, John R. Rockwell and Samuel D. Hubbard, of Connecticut, Robert Toombs, of Georgia, Alexander Ramsay, Richard Broadhead and James Pollock, of Pennsylvania, Bennou G. Thibaux, of Louisiana, John S. Pendleton, of Virginia, Luther Severame and Robert F. Dunlap, of Maine, Henry W. Y. Cranston and L. H. Arnold, of Rhode Island, Edward Long, of Maryland, all members of the House of Representatives of the United States Congress; John McLean, Levi Woodbury, James M. Wayne, Samuel Nelson and John McKinley, Judges of the Supreme Court of the United States; Albert Gallatin, late Envoy Extraordinary and Plenipotentiary Minister of the United States to France; Theodore Frelinghuysen, L. L. D., chancellor, and James Tallemage, president of the University of New York; Josiah Quincy, L. L. D., late president, and Jared Sparks, L. L. D., professor of Harvard University; Nathaniel F. Moor, L. L. D., president of Columbia College, Professor Joseph G. Cogswell, of New York, Samuel A. McCoskry, Bishop of Michigan; Rev. G. S. Bedell, of the Episcopal church of New York; John McCloskey, bishop coadjutor and Charles Constantine Pise, D. D., of the Roman Catholic church, of New York; Thomas H. Skinner, D. D., of New York, and W. B. Sprague, D. D., of Albany, of the Presbyterian church; Rev. Henry W. Bellows, of the Unitarian church; Rev. Edwin Holt and William R. Williams, D. D.,

of the Baptist church; William F. Havemeyer, mayor of the city of New York; Josiah Quincy, Jr., mayor of the city of Boston, in the State of Massachusetts; Green C. Bronson, chief justice, and W. P. Hallett, clerk of the Supreme Court of this State; John Van Buren, attorney general of this State; Benjamin F. Butler, district attorney of the United States; W. P. McCoun, vice chancellor, and Lewis H. Sanford, assistant vice chancellor of this State; Daniel Lord, Daniel D. Lord, James Sanford, J. Prescott Hall, W. B. Lawrence, David P. Hall, Jonathan Miller, Thomas W. Tucker, Samuel A. Craps, W. M. Evarts, John Jay, Charles E. Butler, C. H. Platt, Morris Franklin, E. P. Hurlburt, John Bigelow, Edward Sanford, M. K. Zabriskie, D. L. Wite, Mortimer Porter, Stephen P. Nash, D. W. Walker, Francis H. Upton, Ralph Lockwood, Edwin Stoughton, Edwin Burr, D. E. Wheeler, Alexander J. Johnson, H. S. Dodge, C. Van Swartwood, Richard H. Bowne, John C. Crosby, John H. Magher, Augustus Shell, John Slosson, Stephen Cambreling, John H. Lee, William Van Wyck, of city and State of New York, T. Parkin Scott, of Baltimore, in the State of Maryland, James Page and George W. Page, of Philadelphia, in the State of Pennsylvania, John Pickering, Richard Robins and George Snelling, of Boston, in the State of Massachusetts, all counsellors at law; J. J. Astor, Edward Treadwell, G. H. Stryker, Alfred G. James, W. Woodbridge Hudson, and Livingston H. Miller, all attorneys at law in the city and State of New York; Richard H. Smith, president of the Union Insurance Company of Philadelphia, in the State of Pennsylvania, and Henry Bohlen of the city and State aforesaid; Dr. Samuel G. Howe, Amos Lawrence, and Charles Lyman, of Boston, in the State of Massachusetts; F. C. Tucker, president of the Leather Manufacturers Bank, James Gallatin, president of the National Bank, Shepherd Knapp, president of the Merchants' Bank, Reuben Withers, cashier of the Bank of the State of New York, Preserve Fish, president of the Tradesmans' Bank, George Newbold, president of the Bank of America, J. Oothout, president of the Bank of New York, John S. Stevens, president of the Bank of Commerce, and George Curtis, cashier of the same Bank, D. Leavitt, president of the Bank of Exchange, and John S. Fish, cashier of the same Bank, Robert S. Patterson, president of the Mutual Benefit Life Insurance Company, James G. King and Samuel Ware, Bankers, Philip R. Kearney, Secretary of the New York Life Insurance Company, all of the city and State of New York: Joseph R. Chandler, proprietor and editor of the Philadelphia United States Gazette, James W. Webb and Charles King, proprietors and editors of the Courier and Enquirer, of New York, John H. Guion, publisher of the Morning Views, of New York, Theodore Dwight, proprietor, and W. B. Townsend, editor of the New York Express, Francis Hall, proprietor and editor of the New York Commercial Advertiser, W. C. Bryant, proprietor and editor of the New York Evening Post, Nathan Hall, proprietor and editor of the Boston Daily Advertiser, John L. O'Sullivan, proprietor and editor, and Thomas P. Kettal, and C. C. Gardiner, editors of the Democratic Review, John Allen, proprietor, and S. Gaylord Clark, editor of

the Knickerbocker, Horace Greeley, editor and proprietor of the New York Tribune; General John Wilson, of Missouri, Colonel Jas. Monroe, R. Watts, Jr., M. D., J. H. Raymond, Fitz Green Hallock, the Poet, E. F. Forestry, William Douglass, Vanbrigh Livingston, Campbell P. White, Isaac T. Smith, Elijah F. Purdy, James Conner, J. D. Fowler, Jacob A. Westervell, Amos Livingston, John Cotton Smith, W. E. Whiting, J. W. Bogare, all of the city and State of New York; and all such persons as they shall at any time hereafter associate with themselves, are hereby created a body corporate, by the name of the "Polish Sclavonian Literary Association in the State of New York," for the purpose of collecting a library, and promoting the diffusion of knowledge of the history, science, and literature of the nations of the Sclavonian race, giving lectures and publishing tracts, and a journal in English, and such foreign languages as the corporation shall deem proper.

"§ 2. To meet the exigencies of the purposes for which this corporation is created, it shall have the power of holding real and personal property to the amount of two hundred and fifty thousand dollars, which is to be acquired by subscriptions, gifts, donations, assignments, devises, and purchases.

"§ 3. The Executive Department of the corporation shall consist of a President, two Vice-Presidents, a Corresponding Secretary, one Librarian, one Treasurer, and a Board of Directors, whose number shall not exceed eleven members, including the President and the Vice-President, who shall be *ex officio* members of the Board of Directors.

"§ 4. The officers enumerated in the preceding section shall be chosen annually on the 29th of November, by a plurality of votes of the members who shall be present at such annual meeting. And if such meeting shall not be holden on that day, then on such other day as the President, or in his absence, the acting Vice-President shall appoint.

"§ 5. The vacancies which may take place between the annual elections, shall be filled by commissions to be issued by the President, and in his absence, by the acting Vice-President, with the advice of the Board of Directors, and the officers thus appointed shall continue in office until others in their stead be elected at the next annual meeting of the corporation.

"§ 6. The corporation shall have the power of making such by-laws and regulations as they shall judge proper for regulating further their annual and other periodical meeting; for prescribing the duties of the respective officers, and the mode of discharging them; for admission of the new members, and the mode of suspending or expelling such officers and members as the safety and honor of the corporation may require, and for other business calculated to promote the object and purposes of the corporation. But it is expressly provided that no by-laws shall pass, or be changed unless the meeting shall be attended by a majority of the members of the association residing in the city of New York. The members residing in the other States may send their votes in writing, if they choose to do so, which shall be counted with the votes of the members present at the meeting.

"§ 7. Right Rev. Bishop McCoskry, George Folsome, Senator, William G. Havemeyer, mayor of the city of New York, Major G. Tochman, or either two of them, are authorised to invite seven members of the corporation to form with them a committee, whose duty shall be to draw the first by-laws, and to submit them to the decision of the corporation at a meeting which the said committee shall call as soon as they prepare the by-laws. This meeting shall also elect the officers of the corporation for the current year.

"§ 8. No debts shall be contracted by the said corporation except for the purchase of books, for printing and rent of rooms, and the whole amount of its debt shall at no time exceed two thousand dollars.

"§ 9. The said corporation shall further possess all general powers and be subject to all restrictions and liabilities prescribed by the Third title of the 18th Chapter of the first part of the Revised Statutes of this State.

"§. 10. This Act shall take effect immediately.

"STATE OF NEW YORK: *In Assembly, March* 17, 1846. This Bill having been read the third time—two thirds of all members elected to the Assembly voting in favor thereof,

"*Resolved*, That the Bill pass. By order of the Assembly.

"WM. C. CRAIN, *Speaker.*"

"STATE OF NEW YORK: *In Senate, March* 24, 1846. This Bill having been read the third time—two thirds of all member selected to the Senate voting in favor thereof,

"*Resolved*, That the Bill pass.

"A. GARDINER, *President.*"

"Approved this 26th day of March, 1846.

"SILAS WRIGHT."

"STATE OF NEW YORK,
Secretary's Office.

"I have compared the preceding with original act of the Legislature of this State, deposited in this office, and do certify that the same is a correct transcript or exemplification thereof and of the whole of said original.

SEAL.

"In testimony whereof, I have hereunto affixed my seal of office, at the City of Albany, this 26th day of March, in the year of our Lord one thousand eight hundred and fifty-six.

"N. S. BENTON,
"*Secretary of State.*"

"UNITED STATES OF AMERICA.

"By Silas Wright, *Governor of the State of New York*: It is hereby certified that Nathaniel S. Benton is Secretary of State of the State of New York, that the signature of 'N. S. Benton,' to the annexed exemplification is his proper hand writing, and that the said exemplification is authenticated in due form and by proper officer.

"In testimony whereof, the great seal of the State is hereunto affixed. Witness my hand, in the City of Albany, the 26th of March, in the year of Our Lord, one thousand eight hundred and forty-six.

{ SEAL. }

"Silas Wright."

"Passed the Secretary's Office, the 26th of March, 1846.

"Arch. Campbell,
"*Dept. Sec. of State.*"

[*EXHIBIT B.*]

GENERAL TOCHMAN TO MR. BENJAMIN.

Petersburg, Va., November 6, 1863.

Hon. J. P. Benjamin, *Secretary of State of the C. S.:*

Dear Sir: By raising a brigade of troops for the Confederate States, I became identified with their cause. The refusal of the President to give me a regular commission to command that brigade, because, as it appears, the Secretary of War, Mr. Walker, in stipulating with me for raising it, exceeded his authority, has not, in the least degree, lessened my identification with that cause. It has, necessarily, deprived the Confederate States of my military experience and services, and myself of the privilege of serving them by the side of those foreigners and natives who had enlisted and intended to enlist under my command. But, as I conscientiously believe, that I have not misapprehended those great principles which induced me to tender my services to the Confederate States, I have kept for two years and a half just closing, where consistency and honor dictated: in a private retirement, faithful to the cause The passing events in Poland, which is my native country, and the attitude which the rest of Europe is assuming in relation to the Polish question, require now my services there. And, to sustain *there* this confidence and position which I occupied before the separation of the South from the United States, it will be absolutely necessary that I should elucidate, develope, and defend the principles which have induced me to take part in this

war with the Confederate States. As this undertaking, eventually, can but benefit the cause of the Confederate States, and may probably lead to happy consequences, I beg leave respectfully to submit for your consideration, whether it would not be within the province of your high office and its policy, to facilitate my departure. I wrote to the President a letter on the 19th of September last, of which the enclosed is a copy. Its perusal will, I have no doubt, convince you at once that my demand is just. It is based upon the principles of *perfect* right, and self-sustaining it, evidence. I hope that it requires only to be brought to an unbiased notice of the President to obtain his accord. As this result would accelerate my departure for Europe, could you not consistently, with the official propriety, lay this subject before his Excellency. I beg you most respectfully to do it for the benefit of the Confederate States, as well as of Poland. Should you desire an interview on this subject, I beg you to notify me of it by addressing me a note to Columbia, S. C., care of Mrs. Sosnowski, where I am going to-morrow, and propose to remain there until the 1st of December.

I have the honor to be,

With the highest regard,

Your most obedient servant,

G. TOCHMAN.

MR. BENJAMIN TO GENERAL TOCHMAN.

RICHMOND, 11th November, 1863.

Major *G. Tochman*, care of Mrs. Sosnowski, Columbia, S. C.:

DEAR SIR: I have your letter of the 6th instant, and regret that I cannot serve you in the matter to which you refer, as it is one entirely out of the sphere of my official duties, and in which it would not be proper for me to interfere.

I am, very respectfully, your obedient servant,

J. P. BENJAMIN.

[*EXHIBIT C.*]

SPOTSWOOD HOTEL, No. 107,
Richmond, Va., Dec. 4 1863.

Hon. JAS. A. SEDDON, *Secretary of War:*

SIR: My papers, (marked T, W, D, 246,) being on file in your department show that the President referred to your decision the subject set forth in the letter I addressed to him on the 19th of September last, by endorsing on the wrapper of the bundle the following directions:

"The within letter from Major Tochman contains statements which your record will test.

"1st. That the Secretary of War promised him the appointment of Brigadier General.

"2d. That he raised a brigade.

"3d. That I refused to give him the commission he had a right to expect.

"No notice is taken of the fact that the authority was to raise troops abroad, and that they were raised at home.

"The claim for money you will notice as it shall be found to relate to any object for which the funds of your department are applicable."

On the same wrapper below the President's directions, is endorsed your decision as follows :

"Secretary of War : The papers in the matter of General Tochman were examined last winter, and he was informed that the department 'had not been invested with the power or means of paying for official services in cases when no commission had been issued.' He subsequently applied to Congress, and a committee reported a complimentary resolution which is enclosed."

I beg you respectfully to review this, your decision, upon the following grounds :

1st. In the bundle of the papers, my letter of the of 9th September last, refered to you by the President, is missing. I infer from this, that it was not before you when that decision was made. I enclose herein a copy of the missing letter, which will show you that that decision does not cover the case.

2d. It does not cover even the requirements pointed out by the President, in his directions numbered 1st, 2d and 3d, and as it does not appear that they have been specially, or even generally, tested by the record as the President directs. It is true that you say in the decision that "the papers in the matter of Gen. Tochman were examined last winter." But that examination was confined only to finding out whether a regular commission was issued and given to me or not. The object of finding it out was to enable you then to decide, whether you had authority to pay any pecuniary grievances. The points now raised by the President, and specified in his directions to you under the numbers 1st, 2d and 3d, are of a different character, and if fully established by the evidence of record in your department, may secure to me the attainment of that right and justice which I claim, and which is due to me.

3d. It is erroneously stated in your decision, that I applied to Congress "subsequently" to your informing me that the department "had not been invested with the power or means of paying for official services in cases where no commission had been issued. "My memorial was presented to Congress in January, and your letter, furnishing me that information (without my request,) bears the date of Febuary 17, 1863. The complimentary resolutions, reported by the committee to which you refer at the end of your decision, do not close this subject with a compliment alone. They show on their face that the adjust-

ment of my "pecuniary grievances" is left to the court of claims. But as this court has not been yet created, and I am preparing to go to Europe to assist my native land, Poland, in her present struggle, I therefore brought this matter before his Excellency by the letter heretofore refered to, which is missing from the bundle of papers being on file in you department, begging his Excellency to settle with me this claim in the manner stated in that letter. Your decision does not meet this point of the case.

4th. The President says in his directions, addressed to you, "No notice is taken (meaning in my letter to him) of the fact that the authority wasto raise troops abroad, and that they were raised at home." The President evidently labored under great mistake. The authority under which I raised my troops reads as follows:

"CONFEDERATE STATES OF AMERICA, WAR DEPARTMENT,
"*Montgomery*, May 20, 1861.

"To Major GASPAR TOCHMAN:

"SIR: You are authorized to raise ten companies, to be composed of persons of foreign birth, and to enlist for the war, with the privilege, on the part of the privates, to withdraw at the end of three years. Or, *should you find it practicable*, you are authorized to raise twenty companies, which *would be organized into a brigade.* Such officers of the army as may be necessary will be detailed at *such points within the Confederacy as you may indicate, to enlist the men.* Or, you are authorized to raise two regiments for the war, to be received *with the officers as far as may be acceptable to the Confederate Government.*

"Very respectfully, your obedient servant,
"L. P. WALKER, *Secretary of War.*"

Besides this evidence refuting the statement that I had to raise my troops abroad, I respectfully submit, that the enlistment of troops *abroad* is so unfavorably looked upon by the international law, that no man of honor would undertake it, nor would the President be warranted in accepting such sort of services. Vattel, in his Law of Nations, book iii, chap. ii, sec. 15, says: "* * * The man who undertakes to enlist soldiers in a foreign country, without the sovereign's permission, * * * * violates one of the most sacred rights of the prince and the nation. This *crime* is designated by the name of kidnapping or man-stealing, and is punished with the utmost severity in every well-regulated State. Foreign recruiters are *hanged without mercy and with great justice.* It is not presumed that their sovereign has ordered them to *commit a crime;* and, supposing even that they had received such an order, they ought not to have obeyed it—their sovereign *having no right to command what is contrary to the law of nature.* * * * * * But, if it appears that they acted by order, such a proceeding, in a foreign sovereign, *is justly considered as an injury*, and as a *sufficient cause for declaring war* against him, unless he makes suitable reparation."

The object of my requesting you to review your decision is, the expectation, that when you "test, by the record," the points specified in the President's directions addressed to you, which are numbered first, second and third, and when you disabuse his Excellency from the error that my authority required of me raising my troops abroad, he may yet do me that justice, which, when due to me, as the whole history of the case proves itis never too late to administer.

To facilitate your search, I have the honor to communicate to you a copy of the memorial presented to Congress last winter, which led the Committee on Military Affairs to adopt and report these complimentary resolutions to which you refer at the close of your decision. The exhibits numbered 3, 4, 6, 7, 9, 13, 15, 18, 19, 20 and 31, constitute the record by which you will have to test the points his Excellency desires in his directions addressed to you.

I have the honor, sir, to be,

Your most obedient servant,

G. TOCHMAN.